Supreme Court, U. S.
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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-1659

SIDNEY B. ROWLETT, SR.,
PEGGY ANN ROWLETT, Petitioners

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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INDEX

PAGE

OPINION BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 8

Appendix A 1A

Appendix B 7A

TABLE OF AUTHORITIES

Blumenthal v. United States, 332 U.S. 539, 68 S.Ct. 248 (1947) 7

Nye and Nissen v. United States, 336 U.S. 613, 69 S.Ct. 766 (1949) 7

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v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioners Sidney B. Rowlett, Sr., and Peggy Ann Rowlett respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on March 17, 1976.

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit, is contained in Appendix A hereto and, pursuant to that court's rule and order is unreported.

JURISDICTION

The Judgment of the Court of Appeals for the Tenth Circuit was entered on March 17, 1976. A timely Petition for Rehearing was denied on April 19, 1976. The order denying the Petition for Rehearing is contained in Appendix B hereto. This petition for certiorari was filed within thirty (30) days of the order denying the Petition for Rehearing. This Court's jurisdiction is invoked under 28 USC § 1254 (1).

QUESTIONS PRESENTED

1. Whether, in a trial where joint defendants are charged in two (2) counts, both with conspiracy and the substantive offense, evidence of statements and conduct by one co-conspirator, admissible against all co-conspirators on the conspiracy count, are also admissible against all defendants on the substantive count.

2. Whether, in a trial where joint defendants are charged in two (2) counts, both with conspiracy and the substantive offense, evidence not admissible against all co-defendants must be limited by the Court at the time of its admission into evidence.

STATUTORY PROVISIONS INVOLVED

18 USC Sec. 371:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is

> the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 USC Sec. 472:

> Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

18 USC Sec. 473:

> Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

STATEMENT OF THE CASE

Federal jurisdiction was invoked by Indictment of both petitioners on two (2) counts - Count I of which charged a conspiracy among petitioners and others to violate 18 U.S.C., Sections 472 and 473, in violation of 18 U.S.C., Section 371, and Count II of which charged the petitioners with a violation of 18 U.S.C., Section 473, in that they did willfully and knowingly sell, transfer and deliver counterfeit obligations of the United States.

Upon the jury's verdict of guilty against both petitioners as to both counts of the Indictment, petitioner Sidney Rowlett was sentenced to four (4) years imprisonment on Count I and eight (8) years imprisonment on Count II, the sentences to run consecutively, and petitioner, Peggy Rowlett, was sentenced to three (3) years imprisonment on Count I and three (3) years imprisonment on Count II, the sentences to run concurrently.

The petitioners' pre-trial motion for severance was denied, as was petitioners' post-trial motion for a new trial, which included, among other grounds, prejudice by reason of failure to sever.

The conspiracy count alleged eight (8) overt acts. Five (5) of the overt acts concerned an alleged conspiracy between petitioners and one Theodore Fore, to pass and sell counterfeit obligations in Virginia.[1]

One overt act concerned an alleged conspiracy between petitioners and one Daniel Murphy to pass and sell counterfeit obligations in Wisconsin. Fore and Murphy were unindicted co-conspirators. The other two overt acts alleged a conspiracy between petitioners and Pauldino to pass and sell counterfeit obligations in Kansas, and the substantive count alleged a sale of counterfeit obligations in

---

1/ Another co-defendant at trial, Michael Pauldino, was also alleged to be a conspirator.

Kansas, thus being related to the latter two overt acts alleged in the conspiracy count. There was no averment, nor was there any proof, that the unindicted co-conspirators Fore and Murphy ever dealt with each other in any fashion or were in any measure involved in the alleged conspiracy and sale in Kansas. In fact, Overt Act No. 6, the only overt act relating to events in Wisconsin, was deleted by the court at the conclusion of the trial and conceded by the government not to have been proven at the trial (Tr. p. 478).

At trial, the unindicted co-conspirator Fore, testified to telephone conversations with petitioner, Sidney Rowlett concerning counterfeit money (Tr. pp. 151-153). He testified that he paid money to petitioner Sidney Rowlett for the purchase of counterfeit obligations (Tr. p. 159). He testified that he met petitioner, Peggy Rowlett, who gave him a package containing counterfeit obligations (Tr. p. 155), although he had no discussions with her concerning counterfeit currency (Tr. p. 157).

No testimony at all was introduced which linked petitioners with the unindicted co-conspirator Murphy in Wisconsin, and, in fact, as previously noted, that overt act was deleted for failure of proof.

The sale of counterfeit obligations in Kansas. as averred in the substantive count, was alleged to have been to a government agent. No evidence was introduced directly connecting petitioners to the agent who purchased the counterfeit obligations in Kansas, but there was testimony of government agents, who were following petitioners in their car that day, that petitioners were in the area where the purchase took place and that they did meet briefly and talked with Pauldino after the sale was made. There was no testimony from anyone that anything was seen to pass between petitioners and Pauldino, who made the actual sale in Kansas. There was testimony that Pauldino told the government agent at the time of the purchase in Kansas, that his "man" was here and that he nodded in the direction of petitioner, Sidney Rowlett, who was standing across the street.

There was testimony that a week after the sale was made, petitioner, Sidney Rowlett, spent a counterfeit one hundred dollar note of the same type as those discovered in Virginia, Wisconsin and Kansas (Tr. p. 365), and there was also testimony that petitioner, Peggy Rowlett, spent a genuine marked one hundred dollar bill, which was involved in the sale of counterfeit obligations to Pauldino by the government agent (Tr. p. 363).

The balance of the government's case was involved primarily with testimony and exhibits linking petitioners with Pauldino and Fore by way of telegrams, telephone line and toll information and Western Union Moneygrams.

REASONS FOR GRANTING THE WRIT

Since both questions presented relate, in slightly different aspects, to the limitation of evidence where joint defendants are tried on joined counts, they will be dealt with together.

In the conspiracy count, there were alleged essentially three (3) similar, but separate, conspiracies. One involved as its ultimate object, the sale of counterfeit federal reserve notes to the unindicted co-conspirator, Fore, in Virginia; one involved similar allegations concerning the unindicted co-conspirator, Murphy, in Wisconsin; and, the last involved similar allegations concerning sale to a federal agent in Kansas. No connection was alleged or proved between Fore, Murphy, or the government agent.

Fore testified at length concerning specific conversations with petitioner Sidney Rowlett involving the alleged sale in Virginia. He testified to a lesser extent concerning his association with the petitioner, Peggy Rowlett. There was no testimony at all linking either petitioner with Murphy in Wisconsin, in fact, as previously noted, the only overt act charged concerning events in Wisconsin, was dismissed, although none of the evidence introduced with respect to that overt act was ever stricken from the record. The only testimony linking petitioners with the alleged sale

in Kansas was that they were at the bus station where the sale took place and were seen in the company of Pauldino, who, the government agent testified sold the counterfeit obligations to him. Of course, subsequent to the alleged sale in Kansas, petitioner, Peggy Rowlett was alleged to have been in possession of a marked bill used in the sale and petitioner, Sidney Rowlett, is alleged to have passed a similar counterfeit obligation.

As is usual in such trials, the conspiracy charge was used to string together disparate evidence alternately damaging to one co-defendant or another. With all of the evidence introduced, however, involving essentially separate transactions, there was *not one instance* where evidence was limited, at the time of its introduction, as to any one co-defendant, with respect to the substantive offense.

In *Blumenthal v. United States,* 332 U.S. 539, 68 S. Ct. 248 (1947), this Court noted that great caution is required by the trial court to minimize the ". . . risk of transferrence of guilt over the border of admissibility", stating:

> "That danger was real. It is one likely to arise in any conspiracy trial and more likely to occur as the number of persons charged together increases. Perhaps even at best, the safeguards provided by clear rulings on admissibility, limitations of the hearing of evidence as against particular individuals, and adequate instructions, are insufficient to ward off the danger entirely. It is therefore, extremely important that those safeguards be made as impregnable as possible." (332 U.S. at pages 559-560).

Nor was there any limitation of the evidence of statements or conduct on the part of one co-defendant to the issue of proving guilty intent, motive, or guilty knowlege with respect to the substantive count as this Court noted existed in *Nye and Nissen v. United States,* 336 U.S. 613,

69 S.Ct. 766 (1949). Thus, the jury went to the jury room apparently entitled to believe that the statements or conduct of the co-defendant Pauldino, or petitioner Sidney Rowlett, could be considered as evidence against petitioner Peggy Rowlett, as proof of her guilt on the substantive count, and vice versa. The failure to limit evidence was further compounded by the court's instruction to the jury as follows:

> "It is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, *leaving out of consideration entirely, any evidence admitted solely against some other defendant or defendants."* (Tr. p. 495).

Since there was not, in fact, any evidence admitted solely against one of the defendants, the jury could correctly assume that it was entitled to consider all evidence admitted for any purpose.

CONCLUSION

The petitioners respectfully submit that the record in this case demonstrates that substantial and prejudicial evidence was improperly admitted against them, and, further, that such evidence was not properly limited by the trial court.

For the foregoing reasons, this Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, should be granted.

Respectfully submitted,

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COUNSEL FOR PETITIONERS

"APPENDIX A"

NOT FOR ROUTINE PUBLICATION

FILED

MAR 17 1976

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

Nos. 75-1336
75-1410
75-1411

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. MICHAEL E. PAULDINO, PEGGY A. ROWLETT, SIDNEY B. ROWLETT, SR., Defendants-Appellants.	Appeal from the United States District Court for the District of Kansas (D.C. No. 75-6-CR2)

David B.B. Helfrey, Special Attorney, United States Department of Justice, Washington, D.C., and E. Edward Johnson, United States Attorney, District of Kansas, Kansas City, Missouri, for Appellee.

James L. Crabtree of Millin, Crabtree and Houdek, Kansas City, Missouri for Appellant Pauldino.

John G. Bunner, Robert John, Bruce R. Heathcotte of Bunner, John and Heathcotte, Evansville, Indiana for Appellants Rowlett

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Before HOLLOWAY, BARRETT and DOYLE. Circuit Judges.

BARRETT, Circuit Judge.

Michael Pauldino, Peggy Rowlett, and Sidney Rowlett, [1] appeal their jury convictions of conspiracy and dealing in counterfeit obligations in violation of 18 U.S.C.A. §§371 and 473.

Count I of the indictment charged:

> From on or about February, 1974, until on or about September 24, 1974, in the District of Kansas. . . ROWLETT,. . . PAULDINO, and. . . ROWLETT. . . willfully and knowingly did combine, conspire, confederate and agree together and with each other. . .
>
> 1. . . . to pass, utter and sell false and counterfeited obligations of the United States, that is, one hundred dollar Federal Reserve Notes. . .
>
> * * *
>
> 2. Between on or about February and May 1974, at Evansville, Indiana, Peggy Ann Rowlett at the direction of Sidney Bernard Rowlett, Sr. did. . . sell. . . and deliver to Theodore Fore approximately $30,000 in counterfeit Federal Reserve Notes.
>
> * * *
>
> 4. On or about June 28, 1974, Michael Eugene Pauldino, at the direction of Sidney Bernard Rowlett, Sr. sold. . . to Theodore Gardner Fore approximately $30,000 in counterfeit Federal Reserve Notes.

The Government basically relied upon the testimony of twenty-eight (28) prosecution witnesses in establishing the conspiracy of the appellants and the distribution of counterfeit

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[1] Hereinafter collectively referred to as "appellants".

funds. Theodore Fore testified in detail relative to his receipt of $60,000 in counterfeit funds from appellants and the manner in which genuine money acquired from the passing of the counterfeit funds was divided. The Government introduced numerous counterfeit notes, together with marked genuine notes which had been utilized in purchasing counterfeit notes from appellants.

The appellants did not testify nor did they present any evidence.

On appeal appellants contend, inter alia, that the court erred in: (1) failing to quash the indictment; and (2) failing to disclose evidence favorable to them.

I.

Appellants contend that the court erred in failing to quash the indictment upon the basis that it was procured by and through an unauthorized person's appearance before the grand jury.

It was uncontested that David Helfrey, a Washington, D.C. attorney assigned to the Criminal Division of the Department of Justice, appeared before the Kansas grand jury and participated in the proceedings which resulted in the indictment filed against appellants. Appellants contend that Helfrey's appearance in the Kansas proceedings was unauthorized and that the indictment should have been dismissed. We disagree.

28 U.S.C.A. §515(a) provided in part:

> (a) The Attorney General. . . or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings. . . which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.
>
> (Emphasis supplied.)

The validity of Section 515(a) appointments was recently succinctly reiterated by Justice Tom Clark, Retired, in United States v. Dulski, ____ F.2d ____ (7th Cir. December 31, 1975):

> The Act of June 30, 1906, 34 Stat. 816, 28 U.S.C. §515(a) was adopted by the Congress to meet the decision in United States v. Rosenthal, 121 F. 862 (SDNY 1903). The legislative history clearly indicates that the Act was concerned primarily with outside counsel specially retained by the Department. Its stated purpose was to grant to the "special attorneys" the same rights, powers and authority which the United States attorneys possessed. . . The Act has been construed broadly in a series of cases. . . There is specific authorization here for Special Attorney Ward to appear before Grand Juries.
>
> Slip opinion, page 4.

The Dulski opinion is in accord with In re Persico, ____ F.2d ____ (2nd Cir. No. 75-2030, June 19, 1975) and United States v. Wrigley, ____ F.2d ____ (8th Cir. No. 75-1235, July 18, 1975). We note that the appointment of Ward in Dulski to serve as a special attorney in the State of Wisconsin, was made by the same assistant attorney general, via an identical letter (aside from the

designation of the State of Kansas) in effecting Helfrey's appointment.

Helfrey's appointment was proper and in accordance with §515(a), supra. He cannot be considered an unauthorized person appearing before the grand jury under the circumstances of this case.

II.

Appellants contend that the court erred in failing to order the disclosure of grand jury testimony favorable to them and relevant and necessary for their defense.

During the initial stages of the case, the court ordered counsel for the Government to produce for in camera inspection the transcripts of all the witnesses who testified before the grand jury but who would not testify at trial. After an in camera review of the transcripts the court ruled that it had found nothing favorable to appellants. Disclosure of the transcripts was therefore not made to defense counsel. Appellants contend on appeal that the denial of an opportunity to review the transcripts "which might be favorable to them" was reversible error.

The general rule was well stated in Brady v. Maryland, 373 U.S. 83 (1963):

> We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.
>
> 373 U.S. at page 87.

Applying this standard to the facts and circumstances presented here, and having carefully reviewed the pertinent grand jury transcripts, we hold that the court did not err in finding that the transcripts contained nothing favorable to appellants. Accordingly, the court did not err in refusing to order disclosure of the transcripts.

III.

Appellants have presented a plethora of additional claimed trial errors including alleged improper jury instructions, improper admission of certain exhibits and evidence and failure to grant a motion for severance. We observe that most of these allegations are not supported by direct, cogent or satisfactory authority.

We have carefully reviewed and considered all of these contentions. We hold that they are individually and collectively without merit.

AFFIRMED.

"APPENDIX B"

MARCH TERM - APRIL 19, 1976

Before The Honorable William J. Holloway, Jr., The Honorable James E. Barrett and The Honorable William E. Doyle, Circuit Judges

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
vs.	)	No. 75-1336
	)	No. 75-1410
MICHAEL EUGENE PAULDINO	)	No. 75-1411
SIDNEY BERNARD ROWLETT, SR.,	)	
PEGGY ANN ROWLETT,	)	
	)	
Defendants-Appellants.	)	

This matter comes on for consideration of the petitions for rehearing filed by appellants in the captioned cases.

Upon consideration whereof, it is ordered that the petitions for rehearing are denied.

A true copy

Teste

Howard F. Phillips
Clerk, U. S. Court of
Appeals, Tenth Circuit

By Mary G. Sherman
Deputy Clerk

Howard K. Phillips
HOWARD K. PHILLIPS, Clerk

Supreme Court, U. S.
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Nos. 75-1659 and 75-6770

In the Supreme Court of the United States

OCTOBER TERM, 1976

SIDNEY B. ROWLETT, SR., AND
PEGGY ANN ROWLETT, PETITIONERS

v.

UNITED STATES OF AMERICA

MICHAEL EUGENE PAULDINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

RICHARD L. THORNBURGH,
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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1659

SIDNEY B. ROWLETT, SR., AND
PEGGY ANN ROWLETT, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 75-6770

MICHAEL EUGENE PAULDINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1A-6A) is unreported.[1]

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[1]"Pet. App." refers to the appendices in No. 75-1659.

JURISDICTION

The judgment of the court of appeals was entered on March 17, 1976. Petitions for rehearing were denied on April 19, 1976 (Pet. App. 7A). The petition for a writ of certiorari in No. 75-1659 was filed on May 14, 1976, and in No. 75-6770 on May 18, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether certain evidence relevant to the conspiracy charge should have been limited to use on that charge alone.

2. Whether petitioner Pauldino was entitled to inspect the grand jury testimony of all witnesses, including witnesses not called to testify at trial.

3. Whether the government's special attorney was authorized to conduct grand jury proceedings.

STATEMENT

Following a jury trial in the United States District Court for the District of Kansas, petitioners were convicted of conspiracy to distribute counterfeit obligations, in violation of 18 U.S.C. 371, 472 and 473, and of selling counterfeit obligations, in violation of 18 U.S.C. 473. Petitioners Sidney Rowlett and Michael Pauldino were sentenced to consecutive terms of four years' imprisonment on the conspiracy count and eight years' imprisonment on the substantive count. Petitioner Peggy Rowlett was sentenced to concurrent terms of three years' imprisonment. The court of appeals affirmed.

1. Theodore Fore, appearing under a grant of immunity, testified in detail about the conspiracy involving petitioners.[2] Fore testified that Sidney Rowlett approached

[2]Theordore Fore and Daniel Murphy were named in the indictment as unindicted co-conspirators.

him in late 1973 (Tr. 150). In March 1974, after seeing a sample of the notes that Rowlett was passing, Fore indicated that he was interested in distributing the currency (Tr. 152-154). Fore obtained $30,000 in counterfeit $100 notes from Peggy Rowlett (Tr. 155-156). It was agreed that Fore and the Rowletts would pay $30 to Fore's passers for each $100 passed; they would divide the remainder among themselves (Tr. 159-160). Fore usually remitted to the Rowletts by money order.

Sidney Rowlett told Fore he would send "Mike" (petitioner Michael Pauldino) (Tr. 147-148, 162) to Fore's home with an additional $30,000 in counterfeit notes (Tr. 158, 162-163). On June 28, 1974, Pauldino gave Fore the counterfeit money (Tr. 166-167). Fore paid Pauldino $2,600 in genuine currency.

2. On June 26, 1974, Daniel Murphy was arrested in Wisconsin. A search uncovered counterfeit $100 notes of the same origin as the counterfeit bills being distributed by Fore. Through the assistance of Donald Pruitt, a friend of Murphy's, Secret Service Agent Terrence Moore arranged to purchase more of the counterfeit notes from Murphy's supplier. On September 10, 1974, Agent Moore met with Michael Pauldino in Leavenworth, Kansas. Pauldino indicated that "the man is coming from Wichita" with the counterfeit notes (Tr. 275). Pauldino told Moore that the notes being brought were of better quality than those Murphy had passed; Pauldino said that he felt badly about Murphy's arrest (Tr. 276).

Pauldino later told Moore that his "man" had arrived but feared that he had been followed.[3] The place of delivery therefore was shifted to a bus station in Kansas

[3]Indeed, the Rowletts had been followed by two Secret Service agents (Tr. 246-249, 261-264).

City, Kansas (Tr. 277). When Moore and Pauldino arrived, Pauldino said that his "man" already had arrived; he nodded at Sidney Rowlett, who was standing across the street (Tr. 278, 304-305). Pauldino said that Rowlett was waiting for his wife to arrive with the notes (Tr. 279). Shortly after Agent Moore observed petitioners standing together, Pauldino approached his car carrying a package, which he tossed in Moore's lap. The package contained $15,000 in counterfeit notes (Tr. 279-280). Moore paid Pauldino $1,000 in marked currency, the balance of an agreed purchase price of $2,500 (Tr. 277, 280). This transaction was the substantive offense of which petitioners were convicted.

On September 16, 1974, Peggy Rowlett passed a counterfeit $100 bill in a Wichita liquor store (Tr. 262-264, 396). The next day Sidney Rowlett spent a genuine (but marked) $100 bill in the same store; the bill had been given Pauldino by Agent Moore (Tr. 343-344).

ARGUMENT

1. a. Petitioners contend that the trial judge should not have allowed certain evidence bearing on the conspiracy charge to be used to prove the substantive offense. But the substantive offense, which was also an overt act of the conspiracy, was unquestionably committed in furtherance of the conspiracy. That being so, proof showing that any one of the conspirators committed the substantive crime would be proof against all. *Pinkerton* v. *United States*, 328 U.S. 640.

In part, petitioners' argument stems from their mischaracterization of the conspiracy as not one but three separate conspiracies (Pet. No. 74-1659, pp. 6-7). The gist of the conspiracy, however, was an agreement among petitioners to distribute counterfeit $100 notes through

the efforts of others. There was a single large-scale agreement that contemplated a multitude of illegal ends. *United States* v. *Perez*, 489 F. 2d 51 (C.A. 5), certiorari denied, 417 U.S. 945. Cf. *Braverman* v. *United States*, 317 U.S. 49. A single conspiracy does not become multiple simply because each member was not aware of, or in contact with, all other members. All can conspire, provided they knowingly play a role in the fulfillment of the overall plan. See, *e.g.*, *United States* v. *Wilson*, 497 F. 2d 602 (C.A. 8), certiorari denied, 419 U.S. 1069.

Moreover, the trial court instructed the jury that it must give separate consideration to the case of each defendant, analyzing what the evidence showed as to that individual (Tr. 495). There is no indication that the jury did not understand the instructions or that it could not distinguish offenses and offenders.

b. Petitioner Pauldino contends that the district court should not have allowed into evidence the counterfeit notes seized from Daniel Murphy at the time of his arrest. The court permitted the notes to be introduced but instructed the jury to consider them only in relation to the conspiracy charge (Tr. 237, 239-241). Petitioner argues that there was no direct testimony linking Murphy to the conspiracy (Pet. 7), and that the notes were thus erroneously admitted.

But the notes themselves established Murphy's link with the conspiracy. Special Agent Lightsey of the Secret Service testified that the notes seized from Murphy were of the same origin as the notes the Rowletts were distributing (Tr. 415-430, 142-145). Circumstantial evidence may link an individual to the conspiracy. *United States* v. *Perez*, 489 F. 2d 51, 61 (C.A. 5), certiorari denied, 417 U.S. 945. Agent Lightsey's testimony, the proximity in time to the distribution of other counterfeit bills from the

same source,[4] and Pauldino's later statements to Agent Moore concerning the relative quality of the notes sold to Murphy and Moore furnished ample circumstantial evidence linking Murphy to the conspiracy. The bills were therefore properly introduced.

2. Petitioner Pauldino contends that he should have been permitted to examine the testimony of all witnesses before the grand jury, including witnesses not called to testify at trial.

Prior to trial the district court ordered the prosecution to disclose all evidence required by *Brady* v. *Maryland*, 373 U.S. 83. The prosecution disclosed the grand jury testimony of those witnesses it intended to call at trial; it declined to provide petitioner with the grand jury testimony of those it did not plan to call. When petitioner objected to this procedure, the government submitted all transcripts to the court for *in camera* inspection. The court found in the unsupplied testimony no material favorable to the defense.

The trial court sealed the disputed transcripts and forwarded them to the court of appeals. The court of appeals also reviewed the transcripts and held that the district court "did not err in finding that the transcripts contained nothing favorable" to petitioner (Pet. App. 6A).

This procedure was proper. Grand jury testimony is secret, to be made public only for the most pressing reasons. See *United States* v. *Agurs*, No. 75-491, decided June 24, 1976, slip op. 9; *United States* v. *Ruggiero*, 472 F. 2d 599, 604 (C.A. 2), certiorari denied, 419 U.S. 825. The prosecutor has no constitutional duty "to allow complete discovery of his files as a matter of routine practice" (*Agurs*, *supra*, slip

[4]Murphy was arrested two days before petitioner delivered $30,000 in similar $100 notes to Fore. See page 3, *supra*.

op. 11) in the hope "that an item of undisclosed information might have helped the defense * * *" (*id.* at 12).

3. Petitioner Pauldino contends that the Department of Justice strike force attorney who presented his case to the grand jury was not authorized to represent the United States in this regard, and that his indictment is thus invalid. This contention has been rejected by every court of appeals to consider the issue. See, *e.g.*, *United States* v. *Morrison*, 531 F. 2d 1089 (C.A. 1); *In re Subpoena of Persico*, 522 F. 2d 41 (C.A. 2); *United States* v. *Ingenito*, 531 F. 2d 1174 (C.A. 2); *United States* v. *Ferri*, 532 F. 2d 748 (C.A. 3); *United States* v. *Morris*, 532 F. 2d 436 (C.A. 5); *Schebergen* v. *United States*, C.A. 6, No. 75-2381, decided May 13, 1976; *Infelice* v. *United States*, 528 F. 2d 204 (C.A. 7); *United States* v. *Wrigley*, 520 F. 2d 362 (C.A. 8), certiorari denied, November 17, 1975, No. 75-5284; *DiGirlomo* v. *United States*, 520 F. 2d 372 (C.A. 8), certiorari denied, December 15, 1975, No. 75-463; *United States* v. *Alessio*, 528 F. 2d 1079 (C.A. 9), petition for a writ of certiorari pending, No. 75-1363; *United States* v. *Katz*, C.A. 10, No. 75-1318, decided April 27, 1976. In the absence of a conflict among the circuits, there is no need for further review of this question.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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Assistant Attorney General.

JEROME M. FEIT,
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Attorneys.

JULY 1976.

DOJ-1976-07